

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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| <b>In the Matter of</b>                   | ) | <b>CG Docket No. 02-278</b> |
|   | ) |                             |
| <b>Rules and Regulations Implementing</b> | ) |                             |
|   | ) |                             |
| <b>the Telephone Consumer Protection</b>  | ) |                             |
|   | ) |                             |
| <b>Act of 1991</b>                        | ) |                             |

**OPPOSITION TO PETITION FOR STAY  
OF THE NEWSPAPER ASSOCIATION OF AMERICA  
AND THE NATIONAL NEWSPAPER ASSOCIATION**

I respectfully submit this reply to the Newspaper Association of America (“NAA”) and the National Newspaper Association (NNA”) Petition for Stay in regard to the Commission’s reversal on the Existing Business Relationship (“EBR”) dealing with unsolicited facsimile advertisements. [In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Report and Order, FCC Rcd., 03-153 (F.C.C. Jul 03, 2003), 68 FR 44144-01.]

In the June 26<sup>th</sup> adoption of the Commission Report and Order the Commission reversed its earlier opinions that a prior EBR constitutes prior express consent to receive facsimile transmissions. Such a reversal is appropriate given the plain language of the statute, the intent of Congress and the unanimous decisions handed down by the courts that have addressed this issue<sup>1</sup>.

The NAA and NNA petition incorrectly claims that the Commissions reversal of its opinion is a new rule. There is no new rule! There has never been an EBR exemption in the United States Code or Code of Federal Regulations. The Commission erroneously issued an opinion that an EBR equated to prior express consent. The Commission has rightfully corrected itself and reversed its opinion.

Additionally, the NAA and NNA petition correctly claims that the faxes in question are: “unsolicited faxes to communicate with these advertisers about space availability, special offers or special seasonal published sections...” which is by definition a facsimile advertisement.

In that light it is only prudent that everyone obtain permission by signature and telephone number prior to transmitting an unsolicited facsimile for commercial purposes. Asking

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<sup>1</sup> See comments of Kondos & Kondos Law Offices, John Holcomb Esq. and Robert Biggerstaff

for permission during an initial contact with someone does not take that much more time or any extra record keeping.

In conclusion, there is no exemption in the TCPA for an EBR. It is not labor intensive or burdensome to obtain the signature authorization and telephone number prior to transmitting an unsolicited facsimile for commercial purposes. It is not only the proper thing to do but it will also help those entities engaged in legitimate activities from violating a federal consumer protection law. A stay as requested by the NAA and NNA is not in the best interests of the general public and will harm the general public. As such the Commission has made the proper determination in its ruling adopted June 26<sup>th</sup>, 2003 and I respectfully request that the NAA and NNA request for a stay be denied.

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
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